

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1210 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NURMAMAD HAJI SULEMAN

Versus

MAMAD HASAN -DIED. THRO' HEIRS SARBAI MAMAD & 3 ORS.

Appearance:

MR SURESH M SHAH for Petitioner

MR AM MEHTA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 08/09/2000

ORAL JUDGEMENT

The petitioner is the original defendant, against whom one Mamad Hasan has filed a suit, being Special Civil Suit No.187 of 1984, in the Court of Civil Judge (S.D.), Jamnagar, which is a suit for permanent injunction. It is the case of the said Mamad Hasan in

the said suit that he is an agriculturist and that the ancestral land situated on the sim of Jamnagar City, being Survey Nos. 954/1 and 990/Paiki, is in possession of the plaintiff and the same is cultivated by the plaintiff. It is the case of the plaintiff that he is an old man, aged about 70 years, and he had engaged defendant to look after his land and to cultivate the land on his behalf. However, the defendant is trying to take away the land in question and is trying to take away the crops which are cultivated on the said land. He has also stated that thumb impression of the plaintiff has been taken on stamp papers by representing falsely that for the purpose of submitting some documents in the Mamlatdar's office, etc., documents are necessary on stamp. It is the case of the plaintiff that he, being an illiterate person, relied upon the defendant and put his thumb impressions on some blank papers. The aforesaid suit was originally instituted by said Mamad Hasan for permanent injunction.

In the said suit, on behalf of the defendant, i.e. the present petitioner herein, written statement was filed. In the said written statement, contention was taken by the defendant that he is in possession of the suit property and that he has taken possession of the land by virtue of an Agreement to Sell executed by the plaintiff on 2.6.1984 and he had paid Rs.50,000/- to the plaintiff and after accepting the amount, the possession has been handed over to the defendant. On this and such other averments and mainly relying on the so-called agreement to sell dated 2.6.1984, the defendant prayed that the suit is required to be dismissed.

During the pendency of the said suit, the original plaintiff Mamad Hasan has died on 1.8.1985 and an application Exhibit 25 was given by his heirs for the purpose of bringing themselves on record. That application was given by respondents 1(1) to 1(4). Subsequently, respondents 2 to 5 herein also gave another application at Exhibit 39 on 29.7.1992, as one of them was sister of the deceased plaintiff and rest were the children of that sister of the deceased plaintiff and according to them, this being an ancestral land, they have got share in the suit property and that is how they gave an application to be joined as party and that application was allowed by the learned trial Judge and that is how all the respondents, i.e. respondents 1(1) to 1(4) as well as respondents 2 to 5, are allowed to be joined as co-plaintiffs in the said suit and they have proceeded with the said suit after the death of the original plaintiff Mamad Hasan.

On 28.12.1995, respondents 2, 3 and 4 herein, along with one third party, gave an application for amendment at Exhibit 61, by which they wanted to amend certain paragraphs of the plaint. By that amendment application, possession of the suit premises was sought for from the defendant. They also stated in the amendment application that the original plaintiff had no right to execute any document. They have also prayed that in case it is held that the original plaintiff deceased Mamad Hasan had executed some writing by way of Agreement to Sell, that document was not binding to them. On the aforesaid line, amendment was sought for by them in the plaint along with the amendment in the prayer clause. The learned trial Judge granted the said amendment. That order has been challenged by the original defendant in this Revision Application.

Mr.Shah for the petitioner argued that this amendment could not have been granted firstly because the same was time barred because the prayer for challenging the agreement in question was time barred and according to him, within the limitation period, neither the plaintiff nor his heirs, i.e. respondents 1(1) to 1(4), have sought for any such amendment. He further argued that this plea was already there in the written statement, i.e. regarding the Agreement in question, and, therefore, the original plaintiff could have amended the plaint at the relevant time, at least within three years from the date of the Agreement that amendment should have been brought on record. He also submitted that by amendment, a new case has been made out and, therefore, the amendment could not have been granted. He also said that along with defendants 2 to 4, a third party has also made an application for amendment and that third party had no right to make such application. On the aforesaid ground, the aforesaid order was challenged by Mr.Shah at the time of hearing of this Revision Application.

As against that, Mr.Mehta for the respondents has argued that the Court has very wide power to grant amendment at any stage. He further argued that at the time of hearing of Exhibit 5, in the affidavit-in-reply, the agreement in question is already challenged. He stated that in rejoinder, at the time of Exhibit 5 application, the plaintiff himself has stated that this document is sham and bogus and, therefore, in the interest of justice, the amendment was rightly granted. It is his submission that even in the original plaint, the plaintiff has clearly stated that on some wrong

representation, his thumb impression was taken on the stamp paper and, therefore, when the defendant has tried to take advantage of some of the thumb impressions given by the plaintiff, if ultimately such document is converted into an Agreement to Sell by the defendant, it is absolutely a sham and bogus document and the plaintiff is not bound by that agreement. He has submitted that so far as defendants 2 to 4 are concerned, they were joined later on, i.e. in 1995, and after having been brought on record, only thereafter, they could have given such application for amendment. They have been brought on record in 1995 and immediately they filed an application for amendment. He, therefore, prayed that this Court should not exercise its revisional jurisdiction when substantial justice has been done to the plaintiffs, who have been subjected to fraud by the original defendant by trying to take away the land of deceased Mamad Hasan by taking advantage of some of his thumb impressions on wrong representation.

Mr. Shah has relied upon certain judgments to substantiate his say that the amendment could not have been granted. He relied upon the decision of the Apex Court in M/s. Modi Spinning & Weaving Mills Co. Ltd. and another v. M/s. Ladha Ram & Co., AIR 1977 SC 680. In the aforesaid decision, the Supreme Court has taken the view that the amendment introducing entirely different new case and seeking to displace the plaintiff completely from admissions made by defendants in written statement, could not be granted. However, in the instant case, it cannot be said that by amendment of plaint, the plaintiff wants to introduce an entirely new case. The original deceased plaintiff filed a suit for declaration and injunction regarding this very suit land and ultimately when the defendant took the plea in the written statement that he was in possession, prayer for possession was made by amendment. In fact, if this amendment is not allowed in the plaint, for want of specific prayer in the plaint, no relief can be given to the plaintiff at all. Therefore, in order to effectively decide the controversy in question, whether the suit land belongs to the plaintiffs or the defendant, this amendment is very much essential. It, therefore, cannot be said that by said amendment, plaintiff wants to introduce any new case.

Mr. Shah has thereafter, relied upon the decision of the Apex Court in K. Raheja Constructions Ltd. v. Alliance Ministries and others, AIR 1995 SC 1768. In the aforesaid case, the Honourable Supreme Court, while dealing with amendment of plaint under Order 6 Rule 17 of

CPC, has said that when a suit was filed for relief of permanent injunction restraining respondents from alienating, encumbering, selling, disposing of, or in any way dealing with the property, subsequent amendment of plaint which sought for relief of specific performance of contract is not tenable and that the plaintiff having expressly admitted in the plaint that the defendants have refused to abide by terms of contract, relief of specific performance ought to have been asked for in the original suit itself. Relief of specific performance cannot be allowed to be added after lapse of seven years, being barred by limitation.

In the instant case, the plaintiff had initially asserted his right of possession on the ground that he is the owner of the suit property. In the original plaint itself, the plaintiff had stated that he had relied upon the defendant that he will look after his land and that he being an old and physically infirm person, relied upon the defendant, by which he had put thumb impression on certain documents, which were blank as the defendant stated to him that some more documents will be necessary for the purpose of revenue work and for production before the Revenue offices. In the original plaint paragraph 3, the said averment is clearly made. Thereafter, in the written statement, the defendant took the plea that he is in possession and that the plaintiff had executed an Agreement to Sell in his favour in which there is thumb impression of the plaintiff. The aforesaid so-called agreement having been highlighted in the written statement, the plaintiff gave an amendment that this document was null and void and averments regarding the said document was made by the said amendment and for cancelling the same. As a matter of fact, the original plaintiff, who was an old man, subsequently expired and his heirs were subsequently brought on record and gave amendment to the aforesaid effect. Now, whether the prayer for cancelling the said document is barred by limitation or not can be decided in the suit itself. But, at this stage, opportunity should be given to the plaintiff at least to plead his case in the plaint and the amendment which is granted will be subject to the question of limitation which may be decided along with the suit while parties adduce evidence to this effect.

The aforesaid question of limitation, therefore, is kept open and the same is to be decided at the time of deciding the suit itself.

Whether the defendant had played fraud or not is also required to be decided in the suit itself as and

when the parties adduce evidence to that effect.

Mr. Shah thereafter argued that some of the heirs of the deceased plaintiff could not have been subsequently joined as co-plaintiffs. Mr. Shah had argued that these heirs could not have been joined as they were not necessary or proper parties and that whether the original plaintiff had executed the document with free will or not or the document in question was executed by the original plaintiff or not, cannot be pleaded by his heirs. According to the averments in the plaint, the original plaintiff has stated in paragraph 3 that some thumb impressions on blank papers were taken on wrong representation by the defendant taking advantage of his old age and his ignorance. The plaintiffs can certainly lead evidence to that effect. It cannot, therefore, be said that the heirs cannot be allowed to be joined as co-plaintiffs in the suit as heirs of the original plaintiff in the suit.

Against the aforesaid argument, Mr. Mehta for the respondent-plaintiffs relied on the decision of the Apex Court in *M/s. Ganesh Trading Co. v. Moji Ram*, AIR 1978 SC 484. The Honourable Supreme Court has said in the aforesaid decision regarding the principle governing amendment of the plaint that the provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

The Supreme Court has also further observed as under :-

"... Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which

litigation on particular causes of action
must take "

As stated earlier, in paragraph 3 of the original
plaint, the deceased plaintiff has already stated as to
how he was defrauded by the defendant. Further
particulars have been given by his heirs by way of
amendment and the so-called agreement in question has
been challenged and the agreement put forward by the
defendant has been challenged by way of amendment. It
can never be said to be bringing out new case at all and,
as stated earlier, the question is required to be
considered at the time of proceeding with the trial.
But, at this stage, it cannot be said that the Court had
committed any jurisdictional error in granting amendment
which is required to be corrected by this Court while
deciding revision application under Section 115 of CPC.
I do not, therefore, find any illegality in the impugned
Order. The revision application is, therefore, without
any substance and it is required to be dismissed and is
accordingly dismissed. Rule is discharged with no order
as to costs.

It is required to be noted that the suit is of
1984 and in view of the pendency of this revision
application, further proceedings in the said suit are
stayed. In view of the facts and circumstances of the
case, the trial court is directed to dispose of the
aforesaid suit, i.e. Special Civil Suit No.187 of 1984,
by giving top priority and the same should be disposed
of, latest by 31st March, 2001. It is clarified that by
virtue of the amendment in the plaint, if any deficit
court fee is required to be paid, the plaintiff shall
have to pay additional court fee in the trial court, if
it is not paid so far. Accordingly, the learned Civil
Judge (S.D.), Jamnagar is directed to decide the
aforesaid suit, i.e. Special Civil Suit No.187 of 1984,
by the aforesaid date, i.e. latest by 31st March, 2001,
without fail.

(P.B. Majmudar, J.)

(apj)